

TO: ALL CIRCUIT AND FAMILY COURT JUDGES

FROM: John D. Ferry Jr., State Court Administrator

SUBJ: SCAO ADMINISTRATIVE MEMORANDUM 1998-07
PPO Violation and Enforcement Issues

DATE: June 9, 1998

A number of issues have been raised in the past several years regarding personal protection orders, namely, the specific conditions prescribed in the orders and enforcement of orders. These issues deal with both statutory construction and interpretation as well as court procedure. In consultation with Hon. William J. Caprathe, Hon. Thomas S. Eveland, Hon. Kirsten F. Kelly, Hon. Edward Sosnick and Supreme Court Counsel, the State Court Administrative Office has compiled a list of issues and their corresponding responses for the benefit of the bench. The continually increasing activity in personal protection actions necessitates guidance on these issues to produce efficient and effective handling through uniform practice in areas which have heretofore remained unclear. Until such time as these issues can be addressed further through legislative action and court rule modification, these responses should be considered when processing personal protection actions as well as in the development of Michigan Judicial Institute training materials and courses.

Issue 1: Can or should judges sentence PPO violators to probation? Should judges request Department of Corrections probation officers to conduct a Presentence Investigation (PSI) before sentencing on a PPO violation?

A review of the enabling PPO statutes (MCL 600.2950 and MCL 600.2950a) indicates that “an individual who refuses or fails to comply with a PPO ...is subject to the criminal contempt powers of the court, and if found guilty of criminal contempt, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.” In addition, if violation of the PPO results in some other form of a crime (i.e., domestic assault, aggravated stalking etc.) the court may impose a penalty for the additional criminal behavior as well.

MCL 771.14 requires presentencing reports “before the court sentences a person charged with a felony...and, if directed by the court, in any other case in which a person is charged with a misdemeanor within the jurisdiction of the court...” However, in order to sentence for a PPO violation a defendant must be found in contempt of court and, whether civil or

criminal in nature, contempt of court is not an offense under the penal code. It is a violation of the RJA, specifically MCLA 600.1701, which contains no requirement for a Presentence Investigation.

In many circumstances, it may not be advisable or appropriate to sentence a PPO violator to probation or to request the Department of Corrections to supervise a PPO violator. This is especially true if the PPO violation did not involve assault or some other crime that can be charged under the criminal code. Courts seeking additional guidance on whether or not to place a PPO violator on probation may also want to review MCL 771.1(1) (the probation statute in the Code of Criminal Procedure). It states:

“In all prosecutions for felonies or misdemeanors, except murder, treason, criminal sexual conduct in the first or third degree, robbery while armed, and major controlled substance offenses not described in subsection (4), if the defendant has been found guilty upon verdict or plea, and if it appears to the satisfaction of the court that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.” [Emphasis added.]

Discussion:

Family Division judges have varying opinions about the use of probation where a PPO violation has occurred. Some judges definitely want the option of placing a PPO violator under more direct review and supervision of the court; using probation in an attempt to modify the defendants violent behavior. Judges using probation often require the defendant to participate in counseling or batterer treatment programs, drug treatment program etc. Other judges believe in strict adherence to the statutes and impose a sentence of jail and perhaps also a fine upon a violation of the PPO.

As it relates to requesting a Presentence Investigation (PSI) on a PPO violation, while we can fully understand and appreciate the judges desire/need to have more information on the defendant and whether or not there are risks the court should be aware of, we discourage judges from requesting a PSI.

If a judge wants information on risk assessment or criminal history pertaining to the violator, SCAO staff have developed a form that courts, litigants, and prosecutors may use to obtain and provide the judge with risk information. Since there is no procedure for this, it has not been determined who is best suited for gathering or providing this information. This should be determined on a local level. A copy of the form is included (Risk Information Regarding Violation of Personal Protection Order, form CC 386).

It is the SCAO's intention to convene a meeting in the near future with legislators, SCAO and Supreme Court staff, judges, Department of Corrections officials and, domestic violence advocates in order to identify areas in the law that need to be clarified concerning the use of probation for PPO violations.

Issue 2: Should judges address such issues as rent, utilities, mortgage payments, child support, parenting time, etc. in the order?

No. If the plaintiff needs to have these issues addressed, the court should explain that the issues need to be addressed under a separate cause of action (e.g., motion for family support, paternity, child custody etc.) and may suggest that the plaintiff contact an attorney, a legal aid office, or the prosecutor's office for appropriate assistance.

Issue 3: What options do courts have when presented with a PPO request that does not meet the statutory requirements contained in MCLA 600.2950 and 2950a for issuance?

In situations where domestic violence and stalking are not present, some counties/courts have been working with their local Community Dispute Resolution Centers and have developed a referral form and/or procedure that courts can use to offer the requesting party an additional method of resolution to their dispute. The petition may be denied or dismissed using SCAO Approved Form CC 383, Order Denying or Dismissing Petition for Personal Protection Order.

Also, in some circumstances it may be appropriate to consider the use of peace bonds rather than issuing a PPO if the judge is not convinced that the facts of the case merit the issuance of a PPO.

Issue 4: What should the court do when a pro se litigant comes back and indicates that there has been a violation of a PPO?

If the PPO violation involves serious criminal behavior such as assault, breaking and entering, or aggravated stalking, the court should refer the matter to the prosecutor's office. If the violation is of a lesser nature, the plaintiff can be provided with SCAO Approved form CC 382, Motion and Order to Show Cause for Violating a Personal Protection Order. This is another area requiring further clarification/direction from the legislature. In the interim, if the violation is brought to the courts attention via a pro se show cause action the court:

1. Should set a hearing date (order to appear hearing).
2. May issue a warrant for the arrest of the defendant, if the situation merits.

Issue 5: Should delayed or deferred sentences be used?

Family Division judges contacted report that some counties are adjourning the sentencing date and setting conditions of bond; requiring counseling; establishing tighter PPO restraints, etc.

Future Course of Action:

- Action 1:** The Supreme Court and State Court Administrative Office are continuing to seek resolution of these and other issues with the legislature. There are several recently introduced bills that would clarify handling of PPO matters when the defendant is a minor and expand the scope of domestic violence report procedures and exemptions for warrantless arrest for certain violations of PPOs. Clarification of the role of the prosecutor in PPO violations will also be pursued.
- Action 2:** The State Court Administrative Office continues to catalog and evaluate questions and concerns regarding the Michigan Court Rules regulating personal protection actions. Publication time frame of proposed amendments is contingent on the occurrence of the first action.